

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MICHAEL C. TIERNEY, #A0201434)	CIVIL NO. 11-00082 HG/KSC
)	
Plaintiff,)	ORDER DISMISSING ACTION
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

ORDER DISMISSING ACTION

Pro se Plaintiff Michael C. Tierney has filed a document titled "Motion Under Rule 60(b) of the Federal Rules of Civil Procedure." Tierney is "seeking relief from judgment on the basis of mistake, neglect, fraud, or new evidence." Tierney refers to CR. No. 99-00527, his long-final federal criminal proceeding. Tierney is seeking the return of \$5,000 that was allegedly confiscated from him during his arrest by National Park Service Officers at Volcanoes National Park in 1999. Tierney unsuccessfully pursued this allegation during his criminal proceedings.¹ The Court has since informed Tierney numerous times that the United States Government did not confiscate his funds and does not have his funds. *See e.g., Tierney v. United States*, Civ. No. 08-00543 HG; *Tierney v. United States*, Civ. No. 10-00166 HG.

¹ This Court affirmed the magistrate's denial of Tierney's motion to return his funds, explaining they were never in the government's control or possession, and the Ninth Circuit Court of Appeals affirmed. (See Cr. No. 99-00527 HG, Docs 9 & 16.)

This action is DISMISSED pursuant to 28 U.S.C. §§ 1915A(B) & 1915(e)(2), as frivolous. See *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (no abuse of discretion in dismissing action as frivolous under 28 U.S.C. § 1915 where complaint “merely repeats pending or previously litigated claims”). Because amendment is futile, this dismissal is without leave granted to amend, and may constitute a strike pursuant to 28 U.S.C. § 1915(g). The court further finds that Tierney has accumulated more than three strikes pursuant to 28 U.S.C. § 1915(g),² and, because he does not allege imminent danger of serious physical injury, he is barred from proceeding without concurrent payment of the filing fee. Tierney’s *in forma pauperis* application is DENIED. All other pending motions are DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, February 7, 2011.



/S/ Helen Gillmor

Helen Gillmor
United States District Judge

Tierney v. United States, Civ. No. 11-0082 HG/KSC; ORDER DISMISSING ACTION; psas/Screening/DMP/2010/Tierney 11-82 HG

² See e.g., *Tierney v. Kupers*, 128 F.3d 1310 (9th Cir. 1997) (finding that Plaintiff has three strikes under 28 U.S.C. § 1915(g)).